

Application No.: 09/944,198

Docket No.: 21854-00022-US

REMARKS

The Office Action and prior art relied upon have been carefully considered. Applicant wishes to thank Examiner Pratt for holding a telephone interview with the attorney of record on December 1, 2003. The following comments will serve as a summary of the discussions held during the interview.

With respect to the detailed action on page 2 of the Office Action, the claim rejections under 35 U.S.C. § 112 and the claim objections have been addressed in the foregoing amendment. Accordingly, continuation of this rejection is not anticipated.

Claims 11, 12, and 15 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sono '024A. Prior to discussing the differences between the Sono reference and the claims, a short discussion of the claimed subject matter should prove useful to the Examiner.

Claims 11, 19, and 20 are directed to a method for preserving peeled and cut fruits and vegetables. After being subjected to a treating solution, excess solution is removed from the surface of the products and they are packaged in the usual way. The specification and its examples clearly intend that the cut, peeled, or juiced products retain their moisture and not be dried as a whole fruit or vegetable as is done in Sono.

To this end, an additional limitation to claims 11, 19, and 20 was discussed with the Examiner and was received positively. That is, these claims now include the step of "retaining of the moisture content of the peeled and cut fruits and vegetables during a packaging operation."

With respect to Sono, this reference employs an antioxidant in addition to a polyphenol to preserve whole fruits and vegetables prior to drying. In other words, drying is the step that extends shelf life of the whole fruits and vegetables. In the present invention, a solution is offered that solves discoloration of cut, peeled, and juiced fruits and vegetables due to a combination of flavonoid and food grade antioxidant in a particular weight ratio range.

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No mention is made in Sono of flavonoids and no mention is made that they polyphenols used by Sono are flavonoids. Since Sono deals with a completely different method of preservation, it is not at all obvious that Sono's polyphenols are flavonoids, especially since so many polyphenols are not flavonoids.

Regarding the Examiner's rejection of claims 16-18 under 35 U.S.C. § 135(b), applicant wishes to point out that comparable claim 5, as originally filed, was indicated as being allowable in the first Office Action. 35 U.S.C. § 135(b) does not apply to these claims since the subject matter was originally claimed in the priority document which has as its earliest priority date March 3, 2003, derived from the priority document of PCT application PCT/AU00/01041. McArdle on the other hand has as its earliest effective date April 3, 2000, which is after the present priority date.

From a prior art point of view, it should be pointed out that McArdle (U.S. 6,365,212) improves orange juice flavor by adding dried orange peel. However, the ground peel powder has the same concentration of flavonoid as the juice so that after its mixture with the juice, there is no increase of flavonoid concentration as is clearly required by the present invention.

Further, there is no suggestion in McArdle that: (1) a specific antioxidant, namely alpha lipoic acid, is added in conjunction with a flavonoid; (2) the characteristics other than the color of the orange juice will be improved; (3) that the flavonoids are from plant sources other than citric fruits.

For the reasons set forth here and above, applicant maintains that the claims are neither anticipated nor made obvious under 35 U.S.C. § 102 or 103. Accordingly, early allowance of the application is in order.

In view of the above, consideration and allowance are, therefore, respectfully solicited.

In the event the Examiner believes an interview might serve to advance the prosecution of this application in any way, the undersigned attorney is available at the telephone number noted below.

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The Director is hereby authorized to charge any fees, or credit any overpayment, associated with this communication, including any extension fees, to CBLH Deposit Account No. 22-0185.

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Respectfully submitted,

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